THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 11472 of 2003.

DATED: 13-11-2006.

Between:

Kosaraju Koteswar Rao and others.

…Petitioners.

And

The Deputy Commissioner,
H.R. & C.E. Guntur and others.

…Respondents.

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.No. 11472 of 2003.

Oral order:

This writ petition is filed for a direction to the respondents not to interfere with the petitioners' possession and enjoyment of Ac.9-92 cents of land in Survey No. 2/1 and 4/1 of Thrumalle Village, Amarthalur Mandal, belonging to the Endowment institution i.e., 'Dharma Cheruvu', Turumella village, Guntur District until the scheme dated 17-3-1934 framed in O.S.No. 18 of 1929 by the Court of the Subordinate Judge, Bapatla is modified; and to declare the notice issued by the 2nd respondent in Form-I prescribed under Rule 5 (1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short 'the Rules'), dated 13-4-2003 as arbitrary and illegal.

The petitioners are father and two sons. They admit that Dharma Cheruvu is a public charitable tank and an endowment within the meaning of the expression under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'). It is also admitted that an extent of Ac.9-93 cents in the aforesaid survey number belongs to the endowment. There were certain disputes amongst the trustees and some of the lands were under the encroachment. In the circumstances, some of the residents of the village filed O.S.No.18 of 1929 before the Subordinate Judge's Court, Bapatla seeking framing of a scheme for the proper management of the endowment tank; the administration of its affairs; for removal of encroachers; to take possession of the property; and account for the

income. The suit was decreed on 17-3-1934 and a board of trustees appointed under the scheme.

In 1969 the 1st petitioner is claimed to have become the highest bidder for grant of leasehold rights of an extent of Ac.9-92 cents. Thereafter the petitioners claim to be cultivating the lands paying lease amounts, which varied from year to year.

The 2nd respondent served a notice on the petitioners under Section 5 (1) of the Rules, issued in G.O.Ms.No.379, Revenue dated 11-3-2003. The notice dated 13-4-2003 directed the 1st petitioner to deliver possession of the suit land stating that the lease in favour of the 1st petitioner stood cancelled and informing the petitioner that the leasehold rights in respect of the land will be granted in accordance with the Rules. The petitioners sent a representation to the 1st respondent on
24-5-2003 impeaching the Endowments Department's right or authority to cancel the lease and to put the leasehold rights for auction, contending that the property is governed by the scheme framed by the competent civil court in O.S.No. 18 of 1929. There being no response from the 1st respondent to the petitioners' representation dated 24-5-2003, the petitioners are before this court seeking the reliefs already adverted to.

Heard the learned counsel for the petitioners and learned counsel for the respondents.

The substratum of the petitioners' case as urged by
Sri M.N.Narasimha Reddy, learned counsel for the petitioners is that the respondents appear to be exercising powers under Section 82 of the Act. Chapter III of the Act dealing with the administration and management of the Charitable and Hindu Religious Institutions and Endowments and the provisions of Section 42 (2) (a) in the said

Chapter enjoin that any scheme in force at the commencement of the Act may be modified or cancelled by the Court which formulated the scheme. According to the petitioners, since the lands were leased to the petitioners in 1969, in terms of the scheme as settled in O.S.No.18 of 1929, Section 82 of the Act has no application and the leases have to be granted only in accordance with the scheme framed in O.S.No.18 of 1929 and not in accordance with the provisions of Section 82 of the Act. Sri Narasimha Reddy contends that unless the lands are released from the legal environment of the scheme framed in O.S.No. 18 of 1929, the lands could not be administered under the provisions of the Act.

The vitality of the above syllogism and the context will have to be examined in this writ petition. By the judgment and decree dated 17-3-1934 a scheme was framed in O.S.No. 18 of 1929 at the instance apparently of certain villagers. Under the scheme Dharma Cheruvu is declared to be an endowment institution and its affairs are directed to be managed by a board of five trustees; other provisions have been incorporated for the proper management of the endowment's property and other affairs. Clause 8 of the scheme is that the suit lands shall be leased in open auction by the Trustees for periods not less than 3 years and not more than 5 years at a time and where deemed necessary the Trustees shall also take security for the due payment of rents by the lessees.

Section 42 of the Act which is claimed by the petitioners to be the linchpin of their case, occurs in Chapter III of the Act. This Chapter deals with the administration and management of Charitable and Hindu Religious Institutions and Endowments. Section 14, a provision with which Chapter III commences, enacts that all properties belonging to, or given or endowed to a charitable or religious institution or endowment shall, vest in the charitable or religious institution or

endowment, as the case may be. Section 15 deals with appointment of Board of Trustees and identifies the competent authorities for appointment of a trustee to several classes of endowments. Section 16 to 41 contain housekeeping with regard to the appointment of trustees and their powers, discipline and control. Section 42 of the Act enacts, fortified by a non-obstante provision, that any scheme, judgment, decree or order of a court, tribunal or other authority or any custom or usage, governing any charitable or religious institution or endowment notwithstanding, the provisions of Chapter III shall prevail in so far as they relate to the matters governed by the corresponding provisions in any scheme, judgment, decree or order or any custom or usage and such corresponding provisions, shall thereafter have no effect.

On text and principle, the decree in O.S.No.18 of 1929 even if it be considered to be a scheme is therefore, eclipsed comprehensively by the provisions of Section 42 (1) of the Act, in so far as the appointment of trustees is concerned, as Section 15 of the Act now governs the methods and procedure of appointment of trustees.

Clause 8 of the scheme is that the suit lands shall be leased in open auction by the Trustees for periods not less than 3 years and not more than 5 years. Even if the lease granted in favour of the 1st petitioner in 1969 is to be considered as a lease within the ambit of the scheme framed in O.S.No. 18 of 1929, in the very terms of the scheme, the lease could not endure beyond the period of 5 years i.e., beyond 1974. After 1974 even the 1st petitioner has no manner of legal right to continue in occupation of the land of the endowment nor after the above period, is the 1st petitioner entitled to claim the status of a lessee of the endowment lands. The 1st petitioner would, thereafter, be at best an encroacher. Petitioners 2 and 3 have never been granted lease by the endowment institution. Their status is expressed

to be “sons of the 1st petitioner”. They are therefore, children of an encroacher and nothing more.

Section 82 (1) of the Act enacts that any lease of agricultural land belonging to or given or endowed for the purpose of any institution or endowment, subsisting on the date of commencement of the Act, shall notwithstanding anything in any other law for the time being in force, held by a person who is not a landless poor person, stands cancelled. The Act has come into force with effect from 28-5-1987 by which date the 1st petitioner ceased to be a lessee, as already analyzed. Therefore, the provisions of Section 82 of the Act do not even come into play, as there was no valid subsisting lease between the 1st petitioner and the endowment institution, which is brought to an end by the legislative declaration in Section 82 (1) of the Act. If neither the 1st petitioner nor the other petitioners are lawful lessees as on the date of the Act, there is no question of their being considered as landless poor persons either. The benefits given to landless poor persons in Section 82 of the Act is only for such persons who qualify for being declared as landless poor persons and who have valid and lawful lease of agricultural lands of Hindu Religious and Endowment Institutions. As none of the petitioners have a lawful operational relationship with the endowments in question as lessees, they are not entitled to the benefit under Section 82 of the Act.

There is no provision in the scheme framed in O.S.No. 18 of 1929, which is modified either expressly or by any necessary implication by the provisions of Section 42 or Section 82 of the Act. Therefore, the reliance placed by the petitioners on the provisions of Section 42 (2)(a) of the Act is misconceived. Sub-section (2)(a) of Section 42 of the Act enables any scheme in force at the commencement of this Act, in so far as it relates to matters not governed by the provisions of this chapter (Chapter III), to be modified or cancelled at any time by an

order; (i)……(ii) where such scheme was settled or modified by the Court, by such Court on an application made to it by the Commissioner, the trustee or any person having interest. Since the appointment of trustees is a matter governed by Chapter III of the Act itself is not a matter outside the provisions of Chapter III, trustees could be appointed de hors the scheme framed in O.S.No. 18 of 1929, as the provisions of Section 42 (2)(a) of the Act are not attracted.

For the aforesaid reasons, the petitioners' claim to being tenants of the lands of the endowment as on the date of filing of the writ petition is a claim that has no basis in fact and no foundation in legal principle.

On 19-6-2003 the petitioners obtained an interim order in this writ petition directing the respondents to put the lands of the endowment to public auction for grant of leases and in case the petitioner is prepared to pay the quantity of rice or the amount as is fetched in the highest bid, directing that he be granted lease for a period of one year and in case he is not prepared to do so, clarifying that the respondents are at liberty to resume the land and handover the same to the successful bidder. On 15-10-2003 another interim order was passed by this Court to the same effect i.e., if the petitioner happened to be highest bidder, the leasehold rights be granted in his favour for a period of one year. In yet another order dated 22-7-2004 in W.P.M.P.No.16066 of 2004 this Court directed the respondents to confirm the leasehold rights of an extent of Ac.9-92 cents in Sy.No.2/1 and 4/1 of Thurumella Village in favour of the petitioners at the rate of 125 bags per annum, pursuant to the earlier interim directions of this Court instead of putting the lands to auction afresh, scheduled on 23-7-2004.

Since the inference that this Court exercising jurisdiction and power under Article 226 of the Constitution of India had granted lease of the endowment land to the petitioners must be avoided, the language permitting, it must follow that the ad-interim order of this

Court directs the respondents to continue the petitioners in the land on payment of an amount as lease or whatever, for a period of one year. Since the last of the interim order was on 22-7-2004, the petitioners are entitled to continue in occupation of the endowment land for a period of one year at the rate of 125 bags per annum. After the period of one year, there was not even an interim order justify thepetitioners' continuance in the land in question. Legal rights to continue in the land of the endowment institution, the petitioners had none since 1974, as already analyzed by this Court above.

It is axiomatic that interim orders passed in any litigation will stand dissolved in the final order of adjudication. Where the writ petition is dismissed, it is the duty of the adjudicating court normally to restitute the parties, as far as possible to the position complementary to the final adjudication.

Accordingly, as this Court has now concluded that the petitioners have no manner of legal entitlement or legitimate expectation to occupation of the land of the endowment institution, the petitioners defacto occupation of the lands in question during the year 2003 pursuant to the interim order of this Court cannot be elevated to the status of a lawful entitlement.

On behalf of the petitioners, it is contended by Sri Narasimha Reddy that the petitioners are now in occupation of the land; they have raised crops in the land and therefore, they be permitted to harvest the standing crop on equitable principles. Equity follows the law. Endowment properties are consecrated to the administration and management by the endowment officials within the spectrum of the powers and procedures legislatively mandated. The provisions of the Act and the Rules ordain that lease of agricultural lands of the endowment institution be put to periodic public auction for grant of leases and that the bids should be approved by the competent

authority. As the petitioners occupation of the land in question is in clear conflict with this legislative and statutory architecture, this Court cannot on a contrived assumption of vague beneficence, allow the petitioners to harvest the crop they had illegally raised. The petitioners may submit a representation to the respondents for exercise of executive discretion (if there be one available) to enable them to harvest the crop. If such application/representation is made, the respondents may consider such representation/application within the limits of their lawful executive discretion.

There are no merits in the writ petition. The writ petition is accordingly dismissed. However, there shall be no order as to costs.

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GODA RAGHURAM, J

13th November, 2006.
GRR